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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,989	09/24/2003	Donald E. Weder	8403.822	4221
30589	7590	06/24/2004	EXAMINER	
DUNLAP, CODDING & ROGERS P.C. PO BOX 16370 OKLAHOMA CITY, OK 73113			GELLNER, JEFFREY L	
		ART UNIT	PAPER NUMBER	
		3643		

DATE MAILED: 06/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/669,989	WEDER ET AL. <i>DM</i>
Examiner	Art Unit	
Jeffrey L. Gellner	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 24 September 2003.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-32 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-32 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 24 Sept. 2003.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_.

## **DETAILED ACTION**

Acknowledgement is made of Applicant's IDS received 24 September 2003.

### ***Specification***

The disclosure is objected to because of the following informalities:

The "CROSS REFERENCE TO RELATED APPLICATIONS" should be updated to show that 10/263,487 is now US 6,662,494.

Appropriate correction is required.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-4, 6-10, 11-14, 16-21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 31-40 and 41-50 of U.S. Patent No. 6,523,303 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are drawn to a decorative cover or decorative assembly comprising a plant and the cover comprising a base and a decorative border

attached to the base with a curvilinear, undulating configuration wherein the border supports the leaves and petioles and is compressed. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the assembly/cover of the instant application to have the border compressed to an angle from 25 to 40 degrees depending upon the plant used which depends upon consumer demand.

***Claim Rejections - 35 USC §103***

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

<sup>32</sup>  
Claims 1-~~10~~ are rejected under 35 U.S.C. §103(a) as being unpatentable over Charrin (FR 2619698) in view of Ward (US 2,894,258).

As to Claims 1, 7, and 8, Charrin discloses a decorative cover (Figs. 1-4) for supporting leaves and petioles of a plant having substantial horizontal growth comprising a base (region around leadline of 3 in Fig. 4) having a closed lower end, an open upper end, an outer peripheral surface, an object retaining space and a horizontal axis; a decorative border (region around 7 of Figs. 2-4) connected to the base and extending open upper end of the base so as to be disposed at an upward and outward angle with respect to the open upper end of the base (angle shown in Figs. 3 and 4), the border having a curvilinear, undulating configuration (shown in Figs. 3 and 4) which permits the border to hold, support and cushion individual leaves when the plant is disposed in the object retaining space. Not disclosed is the length of the border greater than at

least a portion of the leaves and petioles of the plant positioned on the border and the angle of the border decreases so the border moves to a compressed condition. Ward, however, discloses growing African violets (col. 1 lines 55-60) that would have the length of the border greater than at least a portion of the leaves and petioles of the plant positioned on the border and the angle of the border decreases so the border moves to a compressed condition. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the cover of Charrin by using an African violet as disclosed by Ward so as to meet consumer demand.

As to Claim 2, Charrin as modified by Ward further disclose a cover constructed of a flexible sheet, non-shape sustaining material (Fig. 1 of Charrin) and the cover that is flexible, resilient, and shape-sustaining (Fig. 4 of Charrin).

As to Claim 3, Charrin as modified by Ward further disclose polymeric film (abstract in English of Charrin).

As to Claim 4, Charrin as modified by Ward further disclose coloring (Fig. 4 of Charrin).

As to Claim 5, Charrin as modified by Ward further disclose a plurality of bondingly connected overlapping folds (inherent in cover of Charrin in Fig. 4).

As to Claim 6, Charrin as modified by Ward further disclose the sheet a thickness of from 0.1 to 30 mil (inherent in cover of Charrin in Fig. 4).

As to Claims 9 and 10, the limitations of Claim 1 are disclosed as described above. Not disclosed is the angle of the border relative to the horizontal axis from 40 to 55 degrees. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the cover of Charrin as modified by Ward by having the angle of the border relative to the horizontal axis from 40 to 55 degrees so as to suit consumer demand.

As to Claims 11, 17, and 18, Charrin discloses a decorative assembly (Figs. 1-4) comprising a decorative cover (Figs. 1-4) having a closed lower end, an open upper end, an outer peripheral surface, an object retaining space and a horizontal axis; a decorative border (region around 7 of Figs. 2-4) connected to the base and extending open upper end of the base so as to be disposed at an upward and outward angle with respect to the open upper end of the base (angle shown in Figs. 3 and 4), the border having a curvilinear, undulating configuration (shown in Figs. 3 and 4) which permits the border to hold, support and cushion individual leaves when the plant is disposed in the object retaining space. Not disclosed is a plant with substantially horizontal growth; and, the length of the border greater than at least a portion of the leaves and petioles of the plant positioned on the border and the angle of the border decreases so the border moves to a compressed condition. Ward, however, discloses a plant with substantially horizontal growth (col. 1 lines 55-60) which would have the length of the border greater than at least a portion of the leaves and petioles of the plant positioned on the border and the angle of the border decreases so the border moves to a compressed condition. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the cover of Charrin by using an African violet as disclosed by Ward so as to meet consumer demand.

As to Claim 12, Charrin as modified by Ward further disclose a cover constructed of a flexible sheet, non-shape sustaining material (Fig. 1 of Charrin) and the cover that is flexible, resilient, and shape-sustaining (Fig. 4 of Charrin).

As to Claim 13, Charrin as modified by Ward further disclose polymeric film (abstract in English of Charrin).

As to Claim 14, Charrin as modified by Ward further disclose coloring (Fig. 4 of Charrin).

As to Claim 15, Charrin as modified by Ward further disclose a plurality of bondingly connected overlapping folds (inherent in cover of Charrin in Fig. 4).

As to Claim 16, Charrin as modified by Ward further disclose the sheet a thickness of from 0.1 to 30 mil (inherent in cover of Charrin in Fig. 4).

As to Claims 19-21, the limitations of Claim 11 are disclosed as described above. Not disclosed is the angle of the border relative to the horizontal axis from 40 degrees. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the cover of Charrin as modified by Ward by having the angle of the border relative to the horizontal axis from 40 degrees so as to suit consumer demand.

As to Claims 22, 28, and 29, Charrin discloses a decorative assembly (Figs. 1-4) comprising a decorative cover (Figs. 1-4) having a closed lower end, an open upper end, an outer peripheral surface, an object retaining space and a horizontal axis; a decorative border (region around 7 of Figs. 2-4) connected to the base and extending open upper end of the base so as to be disposed at an upward and outward angle with respect to the open upper end of the base (angle shown in Figs. 3 and 4), the border having a curvilinear, undulating configuration (shown in Figs. 3 and 4) which permits the border to hold, support and cushion individual leaves when the plant is disposed in the object retaining space. Not disclosed is a plant with substantially horizontal growth; and, the length of the border greater than at least a portion of the leaves and petioles of the plant positioned on the border and the angle of the border decreases so the border

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moves to a compressed condition. Ward, however, discloses a plant with substantially horizontal growth (col. 1 lines 55-60) which would have the length of the border greater than at least a portion of the leaves and petioles of the plant positioned on the border and the angle of the border decreases so the border moves to a compressed condition. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the cover of Charrin by using an African violet as disclosed by Ward so as to meet consumer demand. The cover of Charrin as modified by Ward inherently perform the method steps recited in Claim 22.

As to Claim 23, Charrin as modified by Ward further disclose a cover can be flattened or unflattened (Figs. 1-4 of Charrin).

As to Claim 24, Charrin as modified by Ward further disclose a plurality of bondingly connected overlapping folds (inherent in cover of Charrin in Fig. 4).

As to Claim 25, Charrin as modified by Ward further disclose polymeric film (abstract in English of Charrin).

As to Claim 26, Charrin as modified by Ward further disclose coloring (Fig. 4 of Charrin).

As to Claim 27, Charrin as modified by Ward further disclose the sheet a thickness of from 0.1 to 30 mil (inherent in cover of Charrin in Fig. 4).

As to Claims 30-32, the limitations of Claim 22 are disclosed as described above. Not disclosed is the angle of the border relative to the horizontal axis from 40 degrees. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the cover of Charrin as modified by Ward by having the angle of the border relative to the horizontal axis from 40 degrees so as to suit consumer demand.

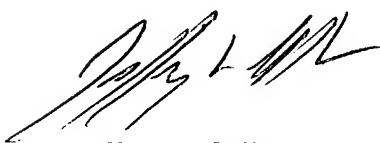
***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lin disclose in the prior art a cover with a compressable border. Weder et al. ('011 A1) discloses in the instant application's pre-grant publication.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner